

THE
GOLDEN PASSAGE

IN THE
GREAT CHARTER OF ENGLAND,
CALLED

MAGNA CHARTA
OR,

The Charter of BRITISH Liberties,

GRANTED BY

KING JOHN

To His SUBJECTS,

In the 17th YEAR of his REIGN,

In *RUNNING-MEAD*,

Between STAINS and WINDSOR,

June 15, in the Year 1215, and 560 Years ago,

WITH

Lord COKE's Remarks and Explanations.

Printed for the Use of the LONDON ASSOCIATION in
M.DCC.LXXVI.

IT is called MAGNA CHARTA, not for the Length or Largeness of it, but in respect of the great Importance of the Matter contained in it; being the Ground of all the fundamental Laws of this Realm. The Nobles and Great Officers were to be sworn to the Observation of it (*Magna fuit quondam, Magnæ reverentia Chartæ*).

It is the Quintessence of the whole Bulk of the Polity of this Nation, the Charter of the People's Rights, the Fence of their Property, and Strength of their Liberties. It has been dearly bought with the Blood of our Ancestors, and is most worthy the Perusal of both Sexes, who have a tender Regard to the rising Generations, that they may live happily, under mild Laws of their own making, and enjoy the blessed Fruits of BRITISH LIBERTY.

Mr. EDWARD LEIGH observes, that it has been confirmed above THIRTY TIMES, and has been an Eye-sore to ambitious Princes, especially to many of the Norman and Scottish Race.

The GOLDEN PASSAGE is this:

*"Nullus liber Homo capiatur vel imprisonetur, aut dissai-
fietur, aut utlagetur, aut exuletur, aut aliquo Modo destru-
atur; nec super eum ibimus, nec super eum Mittemus, nisi per
legale Judicium Parium suorum, vel per Legem Terræ.
Nulli vendemus, nulli negabimus, aut differemus, Rectum aut
Justitiam."*

In ENGLISH thus:

"No Free Man shall be taken, or imprisoned, or dis-
seised, or outlawed, or banished, or any ways destroyed;
nor will we pass upon him, or commit him to Prison, un-
less by the legal Judgment of his Peers, or by the Law of
the Land. We will sell to no Man, we will deny to no
Man, or defer Right or Justice."

This is the noblest Paragraph in the Great Charter of British Rights, and it has been confirmed to us Britons and Englishmen above Thirty Times, in the Compass of 560 Years; and every honest Man should esteem it dearer than his Life Blood.



R E M A R K S

O N

Magna Charta,

B Y

Lord Chief Justice *COKE*;

In the Second Part of his Institutes.

THIS excellent Law holds the First Place in our Statute-Books ; for though there were, no doubt, many Acts of Parliament long before this, yet they are not now extant : It is also stiled *Charta Libertatum Regni*, The Charter of the Liberties of the Kingdom, and upon great Reason (saith *Coke* in his Proem) is it so called from the Effect, *Quia liberos facit*, Because it makes and preserves the People free.

Though it run in the Stile of the King as a *Charter*, yet it appears to have passed in Parliament ; for there was then a Fifteenth granted to the King by the Bishops, Earls, Barons, Free-Tenants, and People which could not be but in Parliament ; nor was it unusual in those Times to have Acts of Parliament in a

Form of a Charter ; as you may read in the Prince's Case, *Co. Rep. C. 8.*

Likewise, though it be said here, that the *King hath given and granted these Liberties*, yet they must not be understood as mere *Emanations* of Royal Favour, or new Bounties granted, which the People could not justly challenge, or had not a *Right* unto before ; for the Lord *Coke* at divers Places asserts, and all Lawyers know, that this Charter is, for the most Part, only *declaratory* of the principal Grounds of the fundamental Laws and Liberties of *England* ; no new Freedom is hereby granted, but a Restitution of such as lawfully they had before, and to free them of what had been usurped and encroached upon them by any Power whatsoever ; and therefore you may see this Charter often mentions *sua Jura*, Their Rights, and *Libertates suas*, Their Liberties ; which shews they had them before, and that the same now were confirmed.

As to the occasion of this Charter, it must be noted, that our Ancestors the *Saxons* had, with a most equal Poize and Temperament, very wisely contrived their Government, and made excellent Provisions for their Liberties, and to preserve the People from Oppression ; and when *William* the *Norman* made himself Master of the Land, though he be commonly called *The Conqueror*, yet in Truth he was not so, and I have known several Judges that would reprehend any Gentleman at the Bar that casually gave him that Title ; for though he killed *Harold* the Usurper, and routed his Army, yet he pretended a Right to the Kingdom, and was admitted by Compact, and did take an Oath to observe the *Laws and Customs*.

But the Truth is, he did not perform that Oath so as he ought to have done ; and his Successors, *William Rufus*,

Rufus, King *Stephen*, *Henry I.* and *Richard*, likewise made frequent *Encroachments* upon the Liberties of their People; but especially King *John* made use of so many illegal Devices to drain them of Money, that, wearied with intolerable Oppressions, they resolved to oblige the King to grant them their Liberties, and to promise the same should be observed; which King *John* did in *Runnymede*, between *Stains* and *Windsor*, by Two Charters, one called *Charta Libertatum*, *The Charter of Liberties* (the Form of which you may read in *Matth. Paris*, *Fol.* 246, and is in Effect the same with this); the other the *Charter of the Forest*, Copies of which he sent into every County, and commanded the Sheriffs, &c. to see them fulfilled.

But by ill Counsell he quickly after began to violate them as much as ever, whereupon Disturbances and great Miseries arose, both to himself and the Realm.

The Son and Successor of this King *John* was *Henry III.* who, in the 19th Year of his Reign, renewed and confirmed the said Charters, but, within Two Years after, cancelled them by the pernicious Advice of his Favourites, and particularly *Hubert de Burgh*, whom he made Lord Chief Justice; one that in former Times had been a great Lover of his Country, and a well-deserving Patriot, as well as learned in the Laws; but now, to make this a Step to his Ambition (which ever rideth without Reins) persuaded and humoured the King, that he might avoid the Charters of his Father King *John* by *Durresse*, and his own Great Charter, and *Charta de Foresta* also, for that he was *within Age* when he granted the same; whereupon the King, in the 11th Year of his Reign, being then of full Age, got one of the

Great Charters, and of the Forest, into his Hands, and by the Counsel principally of this *Hubert*, his Chief Justice, at a Council holden at *Oxford*, unjustly cancelled both the said Charters (notwithstanding the said *Hubert de Burgh* was the premier Witness of all the Temporal Lords to both the said Charters); whereupon he became in high Favour with the King, insomuch that he was soon after, viz. the 10th of *December*, in the 13th Year of that King, advanced (to the highest Dignity that in those Times a Subject had) to be an Earl, viz. of *Kent*. But soon after (for Flatterers and Humorists have no sure Foundation) he fell into the King's heavy Indignation, and, after many fearful and miserable Troubles, he was justly, and according to Law, sentenced by his Peers in an open Parliament, and justly degraded of that Dignity, which he unjustly had obtained by his Counsel for cancelling of *Magna Charta*, and *Charta de Foresta*.

In this Great Charter, all the ancient Liberties and Customs of *London* are confirmed and preserved; which is likewise done by divers other Statutes, as 14 *Edward III. Chap. 2, &c.*

The Clause concerning FREE-MEN deserves to be written in Letters of Gold, and I have often wondered the Words thereof are not inscribed in Capitals on all our Courts of Judicature, *Town-Halls*, and most public Edifices; they are the Elixir of our *English* Freedoms, the Storehouse of all our Liberties. And because my Lord *Coke*,* in the second Part of his Institutes, has many excellent Observations, I shall here recite his very Words. This Clause containeth

NINE BRANCHES.

I. THAT NO MAN BE TAKEN OR IMPRISONED, but *per Legem Terra.*] That is, by the Common

* Sir Edward Coke, Lord Chief Justice of England, and one of the most eminent Lawyers this Kingdom has produced, was born in 1549, and died in 1632, aged 86.

Common-Law, Statute-Law, or Custom of *England*: For these Words *per Legem Terræ*, being towards the End of this Clause, do refer to all the precedent Matters in it; and this hath the First Place, because the *Liberty of a Man's Person* is more precious to him than all the rest that follow; and therefore it is great Reason that he should by Law be relieved therein, if he be wronged.

II. NO MAN SHALL BE DISSEISED.] That is, put out of Seisin, or dispossessed of his Freehold, that is, Lands or Livelihood, or of his Liberties or Free-Customs, that is, of such Franchises and Freedoms, and Free-Customs as belong to him by his free Birth-Right, unless it be by the lawful *Judgment*, that is, Verdict of his Equals (that is, of Men of his own Condition) or by the *Law of the Land*, that is (to speak it once for all) by the due Course and Process of Law.

III. NO MAN SHALL BE OUTLAWED, made an *Exlex*, put out of the Law.] That is, deprived of the Benefit of the Law, unless he be outlawed according to the Law of the Land.

IV. NO MAN SHALL BE EXILED, or banished, out of his Country.] That is, *Nemo perdet Patriam*, No Man shall lose his Country, unless he be exiled according to the Law of the Land.

V. NO MAN SHALL IN ANY SORT BE DESTROYED.] (*Destruere, id est, quod prius structum & factum fuit penitus evertere & diruere*) unless it be by the Verdict of his Equals, or according to the Law of the Land.

VI. NO MAN SHALL BE CONDEMNED AT THE KING'S SUIT, either before the King in his Bench, where the Pleas are *coram Rege* (and so are the Words, *Nec super eum ibimus*, to be understood); nor before any other Commissioner or Judge whatsoever (and so are the Words, *Nec super eum Mittemus*, to be understood) but by the Judgment of his Peers, that is, Equals, or according to the Law of the Land.

VII. WE SHALL SELL TO NO MAN Justice or Right,

VIII. WE SHALL DENY TO NO MAN Justice or Right.

IX. WE SHALL DEFER TO NO MAN Justice or Right.

Each of these BRANCHES we shall briefly explain.

I. *No Man shall be taken.*] That is, restrained of Liberty by Petition or Suggestion to the King or his Council, unless it be by Indictment or Presentment of good and lawful Men, where such Deeds be done, This Branch, and divers other Parts of this Act, have been notably explained and construed by divers Acts of Parliament,

II. *No Man shall be disseised, &c.*] Hereby is intended, that Lands, Tenements, Goods and Chattels, shall not be seized into the King's Hands contrary to this Great Charter, and the Law of the Land; nor any Man shall be disseised of his Lands or Tenements, or dispossessed of his Goods or Chattels, contrary to the Law of the Land.

A Custom

A Custom was alledged in the Town of C. that if the Tenant cease by Two Years, the Lord should enter into the Freehold of the Tenant, and hold the same until he were satisfied of the Arrearages. It was adjudged a Custom against the Law of the Land to enter into a Man's Freehold in that Case, without Action or Answer.

King Henry VI. granted to the Corporation of *Dyers*, within *London*, Power to search, &c. and if they found any Cloth dyed with *Logwood*, that the Cloth should be forfeited. And it was adjudged, that this Charter concerning the Forfeiture was against the Law of the Land, and this Statute: For no Forfeiture can grow by Letters-Patent,

No Man ought to be put from his Livelihood without Answer.

III. *No Man shall be outlawed.*] That is, barred to have the Benefit of the Law. And note, to this Word *Outlawed*, these Words, *unless by the Law of the Land*, do refer. [*of his Liberties.*] This Word hath three Significations.

(1.) As it hath been said, it signifieth the Laws of the Realm, in which Respect this Charter is called *Charta Libertatum*, as aforesaid.

(2.) It signifieth the *Freedom the Subjects of England* have: For Example, the Company of *Merchant-Taylors of England*, having Power by their Charter to make Ordinances, made an Ordinance, that every Brother of the same Society should put the One-half of his Cloths to be dressed by some Cloth-workers, free of the same Company, upon Pain to forfeit 10 s. &c. And it was adjudged, that this Ordinance was
against

against Law, because it was against the Liberty of the Subject; for every Subject hath Freedom to put his Cloths to be dressed by whom he will, & *sic de similibus*. And so it is, if such or the like Grant had been made by his Letters-Patent.

(3.) *Liberties* signified the *Franchises and Privileges* which the Subjects have of the Gift of the King, as the Goods and Chattels of *Felons, Outlaws*, and the like; or which the Subject claims by Prescription, as *Wreck, Waife, Straie*, and the like.

So likewise, and for the same Reason, if a Grant be made to any Man to have the sole Making of *Cards*, or the sole Dealing with any other Trade, that Grant is against the Liberty and Freedom of the Subject, that before did or lawfully might have used that Trade, and consequently against this Great Charter.

Generally all *Monopolies* are against this Great Charter, because they are against the Liberty and Freedom of the Subject, and against the Law of the Land.

IV. *No Man exiled.*] That is, banished, or forced to depart or stay out of *England* without his Consent. By the Law of the Land, no Man can be *exiled* or banished out of his native Country, but either by *Authority of Parliament*, or in Case of Abjuration for Felony by the Common-Law; and so when our Books, or any Records, speak of *Exile* or Banishment, other than in Case of Abjuration, it is to be intended to be done by *Authority of Parliament*; as *Belknap* and other Judges, &c. banished into *Ireland*, in the Reign of *Richard* the Second.

This is a beneficial Law, and is construed benignly; and therefore the King cannot send any subject of
England

England against his Will to serve him out of this Realm, for that should be an Exile, and he should *perdere Patriam*: No, he cannot be sent against his Will into *Ireland*, to serve the King or his Deputy there, because it is out of the Realm of *England*: For if the King might send him out of this Realm to any Place, then, under Pretence of Service, as Ambassador, or the like, he might send him into the furthest Part of the World; which being an Exile, is prohibited by this Act.

V. *No Man destroyed.*] That is, forejudged of Life or Limb, or put to Torture or Death. Every Oppression against Law, by Colour of any usurped Authority, is a Kind of Destruction. And the Words *aliquo modo* (any otherwise) are added to this Verb *destroyed*, and to no other Verb in this Clause, and therefore all Things by any Manner of Means tending to Destruction are prohibited; as, if a Man be accused or indicted of Treason or Felony, his Land or Goods cannot be granted to any, no not so much as by Promise, nor any of his Lands or Goods seized into the King's Hands before he is attainted: For when a Subject obtaineth a Promise of the Forfeiture, many Times undue Means and more violent Prosecution is used for private Lucre, tending to Destruction, than the quiet and just Proceeding of the Law would permit; and the Party ought to live of his own until Attainder.

VI. *By lawful Judgment of his Peers.*] That is, by his *Equals*, Men of his own Rank and Condition. The general Division of Persons by the Law of *England* is, either *one that is Noble*, and in Respect of his Nobility, of the Lords House of Parliament, or of *one of the Commons*, and in Respect thereof of the House of Commons in Parliament. And as there be
divers

divers Degrees of Nobility, as Dukes, Marquesses, Earls, Viscounts, and Barons, and yet, all of them are comprehended under this Word *Peers*, and are Peers of the Realm; so of the Commons, there be Knights, Esquires, Gentlemen, Citizens, and Yeomen, and yet, all of them of the Commons of the Realm. And as every of the Nobles is one a Peer to another, though he be of a several Degree, so it is of the Commons; and as it hath been said of Men, so doth it hold of Noble Women, either by Birth or Marriage.

And forasmuch as this Judgment by Peers is called *lawful*, it shews the Antiquity of this Manner of Trial: It was the ancient, accustomed, legal Course long before this Charter.

Or by the Law of the Land:] That is, by due Process of Law, for so the Words are expressly expounded by the Stat. of 37 Edward III. Chap. 8. And these Words are specially to be referred to those foregoing, to whom they relate. As none shall be condemned without a lawful Trial by his Peers, so none shall be taken, imprisoned, or put out of his Freehold, without due Process of the Law, that is, by the Indictment or Presentment of good and lawful Men of the Place, in due Manner, or by Writ Original of the Common-Law.

Now, seeing that no Man can be taken, arrested, attached, or imprisoned, but by due Process of Law, and according to the Law of the Land, these Conclusions hereupon do follow.

(1.) That the Person or Persons which commit any, must have lawful Authority.

(2.) It

(2.) It is necessary that the Warrant or Mittimus be lawful, and that must be in Writing under his Hand and Seal.

(3.) The Cause must be contained in the Warrant, as for Treason, Felony, &c. Suspicion of Treason or Felony, or the like particular Crime: For if it do not thus specify the Cause, if the Prisoner bring his *Habeas Corpus*, he must be discharged, because no Crime appears on the Return; nor is it in such Case any Offence at all, if the Prisoner make his Escape; whereas if the Mittimus contain the Cause, the Escape would respectively be Treason or Felony, though in Truth he were not guilty of the First Offence. And this mentioning of the Cause is agreeable to Scripture, *Acts xxv. 14. 27.*

(4.) The Warrant or Mittimus containing a lawful Cause ought to have a lawful Conclusion. &c. And him safely to keep until he be delivered by Law, &c. and not, until the Party committing shall further order.

If any Man, by Colour of any Authority, where he hath not any in that particular Case, shall presume to arrest or imprison any Man, or cause him to be arrested or imprisoned, this is against this Act, and it is most hateful, when it is done by Countenance of Justice. King *Edward VI.* did incorporate the Town of *St. Alban's*, and granted to them to make Ordinances, &c. They made a By-Law upon Pain of Imprisonment, and it was adjudged to be against this Statute of *Magna Charta*: So it had been, if such an Ordinance had been contained in the Patent itself.

VII. VIII. IX.] *We will sell to no Man, deny to no Man, &c.*] This is spoken in the Person of the King,

King, who in Judgment of Law in all his Courts of Justice is present ; and therefore every Subject of this Realm, for Injury done to him *in Bonis, Terris, vel Persona*, In Person, Lands or Goods, by any other Subject, *Ecclesiastical or Temporal*, whatever he be, without Exception, may take his Remedy by the Course of the Law, and have Justice and Right for the Injury done him, *Freely* without Sale, *Fully* without any Denial, and *Speedily* without Delay; for Justice must have three Qualities, it must be *Libera*, Free, for nothing is more odious than Justice set to Sale; *Plena*, Full, for Justice ought not to limp, or be granted Piece-meal; and *Celeris*, Speedy: *Quia Dilatio est quadam Negatio*, Delay is a Kind of Denial: And when all these meet, it is both Justice and Right.

We will not deny nor delay any Man, &c.] These Words have been excellently expounded by latter Acts of Parliament, that by no Means common Right or common Law should be disturbed or delayed; no, though it be commanded under the *Great Seal or Privy Seal, Order, Writ, Letters, Message or Commandment whatsoever, either from the King or any other*; and that the Justices shall proceed, as if no such Writs, Letters, Order, Message, or other Commandment, were come to them: All our Judges swear to this; for it is Part of their Oaths; so that if any should be found wresting the Law to serve a Court Turn, they are perjured as well as unjust. The Common-Laws of the Realm should by no Means be *delayed*, for the Law is the surest Sanctuary that Man can take, and the strongest Fortrefs to protect the Weakest of all: *Lex est tutissima Cassis*, The Law is a most safe Head-Piece; and, *sub Clypeo, Legis nemo decipitur*, No Man is deceived whilst the Law is his Buckler; but the King may stay his own Suit, as a *Capias pro fine*, for the King may repite his Fine, and the like.

Al

All Protections that are not legal, which appear not in the Register, nor warranted by our Books, are expressly against this Branch, *nulli differemus*, We will not delay any Man: As a Protection under the Great Seal granted to any Man, directed to the Sheriffs, &c. and commanding them that they shall not arrest him during a certain Time at any other Man's Suit, which hath these Words in it, *Per prerogativam nostram, quam nolumus esse arguendam*; By our Prerogative, which we will not have disputed; yet such Protections have been argued by the Judges, according to their Oath and Duty, and adjudged to be void. As *Mich. 2 H. VII. Rot. 124.* a Protection granted to *Holms*, a Vintner of London, his Factors, Servants, and Deputies, &c. Resolved to be against Law, *Pasch. 7 H. VIII. Rot. 66.* such a Protection disallowed, and the Sheriff amerced for not executing the Writ, *Mich. 13 and 14 Eliz. in Hitchcock's Case*, and many other of latter Time: And there is a notable Record of ancient Time in 22 E. I. *John de Marshal's Case*; *Non pertinet ad Vicescomitem de Protectione Regis judicare, imo ad Curiam.*

Justice or Right :] We shall not sell, deny or delay Justice and Right; neither the *End*, which is *Justice*; nor the *Mean*, whereby we may attain to the End, and that is the *Law*: Right is then here for *Law*, in the same Sense that Justice is so called:

(1.) Because it is the right *Line*, whereby Justice distributive is guided and directed; and therefore all the Commissioners of *Oyer and Terminer*, of Goal-delivery, of the Peace, &c. have this Clause, *Facturi quod ad Justitiam pertinet, secundum Legem & Consuetudinem Angliae*; that is, To do *Justice and Right*, according to the Rule of the *Law and Custom of England*: And that which is called *Common-Right* in 2 E. III, is called *Common-Law* in 14 E. III, &c. and in this Sense it

is taken where it is said, *ita quod stat Rectus in Curia, id est, Legi in Curia.*

(2.) The Law is called *Rectum*, because it discovereth that which is tort, crooked or wrong; for as Right signifieth Law, so Tort, Crooked or Wrong, signifieth Injuries, and *Injuria est contra jus*, Injury is against Right: *Recta Linea est Index sui et Obliqui*, A right Line is both declaratory of itself and the Oblique. Hereby the crooked Cord of that which is called *Discretion* appeareth to be unlawful, unless you take it as it ought to be, *Discretio est discernere per Legem, quid sit justum*; Discretion is to discern by the Law what is just.

(3.) It is called *Right*, because it is the best *Birth-right* the Subject hath, for thereby his Goods, Lands, Wife and Children, his Body, Life, Honour, and Estimation, are protected from Injury and Wrong: *Majus Hereditas venit unicuique nostrum a Jure et Legibus, quam a Parentibus*; A greater Inheritance descends to us from the Laws, than from our Progenitors.

Thus far the very Words of that Oracle of our Law, the Sage and learned *Codex*, which so fully and excellently explain this incomprehensible Law, that it will be superfluous to add any Thing further thereunto.

The most excellent Books on Law and Government, to be read by the British Youth of both Sexes.

1. Judge Blackstone's Analysis of the Laws of England, 8vo. and Commentaries.
2. Mr. Locke, on Government, 8vo.
3. The immortal Sydney's Treatise.
4. Dr. Campbell, on Government, in Preceptor, Vol. 2.



